



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2900 FAX (603) 271-2456



Amherst 101A LLC
Attn: Mr. Norman Weinstein
350 Camino Gardens Blvd. Suite 200
Boca Raton, FL 33432

Re: DES Site # 198903054
Jasper Farm
124 Route 101-A
Amherst, NH 03031

ADMINISTRATIVE ORDER
WMD No. 03-025

October 2 2003

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Amherst 101A LLC pursuant to RSA 146-A. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Amherst 101A LLC is a New Hampshire corporation having a mailing address of 350 Camino Gardens Blvd. Suite 200, Boca Raton, Florida 33432.

C. STATEMENTS OF FACTS AND LAW

1. RSA 146-A authorizes DES to regulate activities to minimize contamination of the waters and land of the state due to oil discharge or spillage. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted NH Administrative Rules Env-Wm 1403 to implement this program.
2. RSA 146-A:15 authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-A, including any rule adopted pursuant thereto. Pursuant to RSA 146-A:15, the Commissioner of DES has adopted Env-C 606 to establish the schedule of fines for such violations relating to oil spills.
3. Amherst 101A LLC is the owner of real property, formerly known as the Jasper Farm. The property is located at 124 Route 101-A, Amherst, NH and is further identified by the DES site number 198903054 ("the Facility"). The Facility is the site of one (1) permanently closed 500-gallon gasoline underground storage tank (UST).
4. The Facility is subject to the requirements of RSA Chapter 146A and NH Administrative Rules Env-Wm 1403.

5. Env-Wm 1403.07 requires that following notification of a violation of the groundwater quality criteria pursuant to Env-Wm 1403.06, the legally responsible party shall investigate the site and the off-site surrounding area for possible impacts of the contamination.
6. Env-Wm 1403.08 requires that the legally responsible person conduct a site investigation. Under Env-Wm 1403.07, the legally responsible person shall submit a remedial action plan to remove, treat, or contain contamination unless DES determines, based on the site investigation, that a remedial action plan is not required or the site meets the no further action criteria of Env-Wm 1403.19.
7. Env-Wm 1403.09 addresses criteria for the remedial action plan ("RAP").
8. Env-Wm 1403.10 requires that following approval of the remedial action plan by DES, the legally responsible person shall submit a design report and construction plans and specifications for the approved alternative.
9. Amherst 101A LLC is a legally responsible person because it failed to address site soil and groundwater contamination. The soil contamination is a source of ongoing groundwater contamination and Amherst 101A LLC failure to act "directly or indirectly causes or suffers the discharge of oil into or onto any surface water or groundwater of this state" (RSA 146-A:3-a.I.).
10. In a letter dated July 18, 2001 sent to Amherst 101A LLC's consultant, DES requested analytical results for soil contamination at this site and a Groundwater Management Permit ("GMP") renewal application. DES also made several recommendations to address soil and groundwater contamination at the site. However, Amherst 101A LLC was unresponsive to this request.
11. In a letter dated April 8, 2003 sent to Amherst 101A LLC's consultant, George Bower, DES made a second request to Amherst 101A LLC for the GMP renewal application and for information addressing soil and groundwater contamination at the site.
12. To date, Amherst 101A LLC has not confirmed removal of contaminated soil nor provided confirmation sampling to document cleanup. Additionally, Amherst 101A LLC has not followed the recommendations in the July 18, 2001 DES letter by either taking corrective action without a remedial action plan or by providing a site investigation report and/or remedial action plan as required by Env-Wm 1403.07 and/or Env-Wm 1403.08.
13. To date, Amherst 101A LLC has not provided a Groundwater Management Permit renewal application as required by Env-Wm 1403.23.

D. DETERMINATION OF VIOLATIONS

1. Amherst 101A LLC has violated Env-Wm 1403.11 by failing to respond and take corrective action without a remedial action plan.
2. Amherst 101A LLC has violated Env-Wm 1403.07 and Env-Wm 1403.08 by failing to complete a site investigation and develop a remedial action plan.

3. Amherst 101A LLC has violated Env-Wm 1403.23 by failing to submit a Groundwater Management Permit renewal application.

E. ORDER

Based on the above findings, DES hereby orders Amherst 101A LLC as follows:

1. **By November 15, 2003**, provide complete copies of all environmental investigations completed after 1997.
2. **By November 15, 2003**, inventory and properly dispose of all containers and drums containing hazardous materials and wastes.
3. **By November 15, 2003**, submit a site plan including the location of the 7 newly installed monitoring wells and the location of the chicken coop area, any petroleum release and drums or containers found during site inventory/disposal efforts.
4. **In November 2003**, conduct groundwater monitoring for all 13 wells (6 existing and 7 newly installed) for VOCs.
5. **By November 15, 2003** sample and analyze a groundwater sample from the existing monitoring well nearest the former farm dump. Analyze the sample for VOCs, SVOCs and RCRA 8 metals. If the groundwater quality does not violate AGQS in the vicinity of the former farm dump, then the owner of the property must submit a landfill registration form to the Department. If wastes remain exposed, the DES requires that they either be removed or covered with clean fill materials approved by DES. If AGQS are violated, DES will require additional measures in accordance with the Solid Waste and Groundwater Protection Rules.
6. **By November 15, 2003**, submit soil confirmation sampling documentation to support cleanup/removal of contaminated soil from the chicken coop area.
7. **By December 15, 2003**, submit the November 2003 sampling results to DES. Following the receipt and review of the sampling results, DES will notify Amherst 101A LLC of the monitoring locations for the April 2004 monitoring events.
8. **By December 15, 2003**, remove the contaminated soil that exceeds state soil cleanup standards or install a groundwater monitoring well to assess the impact of the release on groundwater quality
9. **By December 15, 2003**, submit all related manifests and bills of lading for the container and drum disposal.
10. **In April 2004 and July 2004**, conduct two additional rounds of groundwater monitoring during post construction activities for the locations to be identified by DES based on the November 2003 groundwater monitoring analytical results.
11. **By June 15, 2004**, submit the April 2004 sampling results. By September 15, 2004, submit the July sampling results.

12. **By July 15, 2004**, submit a renewal application for the Groundwater Management Permit (GMP) for this site unless DES determines that a GMP renewal is no longer required, based on the review of information submitted to DES in response to this order.

13. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Gary Lynn, P.E., Supervisor/Oil Remediation and Compliance Bureau
DES Waste Management Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-2181
e-mail: glynn@des.state.nh.us


F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Amherst 101A LLC of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 146-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself.

This Order is being recorded in the Hillsborough County Registry of Deeds so as to run with the land.


Frederick J. McGarry, P.E., DEE, Chief Engineer
Acting Director, Waste Management Division


Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7000 1670 0000 0584 7654

cc: Gretchen Rule, DES Legal Unit
Public Information Officer, DES PIP Office
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Health Officer, Town of Amherst